

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

DEMARIO DONTEZ WALKER

PLAINTIFF

v.

CAUSE NO. 1:17CV244-LG-RPM

JAMARIO CLARK

DEFENDANT

**ORDER ADOPTING PROPOSED FINDINGS OF FACT AND
RECOMMENDATION AND DISMISSING COMPLAINT**

BEFORE THE COURT is the [192] Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert P. Myers, entered in this cause on October 26, 2020. Magistrate Judge Myers recounted the Court's efforts to instruct and remind the Plaintiff of his duty to prosecute this case, and the Plaintiff's failure to substitute the proper party for the deceased-defendant, Jamario Clark. Magistrate Judge Myers accordingly recommended that Plaintiff's Complaint be dismissed without prejudice for failure to prosecute.

Since Plaintiff was granted additional time to file his motion to substitute on August 20, 2020, he has yet to identify the proper party to substitute for defendant, Jamario Clark. Rather, Plaintiff has filed numerous other motions not pertinent to the substitution of the proper party. Magistrate Judge Myers cautioned Plaintiff that failure to file a timely motion to substitute party would lead this Court to dismiss his claims. (*See* Order, July 13, 2020, ECF No. 156).

Where no objection has been filed, the Court need only review the Proposed Findings of Fact and Recommendation to determine whether it is either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.

1989). Having conducted the required review, the Court finds the Magistrate Judge's findings and conclusions neither clearly erroneous nor contrary to law. The Court agrees that Plaintiff's Complaint is due to be dismissed for failure to substitute the proper party under Federal Rule of Civil Procedure 25(a)(1) and for failure to prosecute this case under Federal Rule of Civil Procedure 41(b). Therefore, the Proposed Findings of Fact and Recommendation will be adopted as the opinion of this Court, and Plaintiff's Complaint will be dismissed without prejudice.

IT IS THEREFORE ORDERED AND ADJUDGED that the [192] Proposed Findings of Fact and Recommendation of United States Magistrate Judge Robert P. Myers entered in this cause on October 26, 2020 is **ADOPTED** as the finding of this Court. All pending motions are **DENIED AS MOOT**.

IT IS FURTHER ORDERED AND ADJUDGED that the Plaintiff Demario Dontez Walker's [1] Complaint is **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED this the 30th day of November, 2020.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE